

ORDINANCE NO. 98-313

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
FEDERAL WAY, WASHINGTON, AMENDING FEDERAL WAY CITY
CODE CHAPTER SECTIONS 15-200, -201, -202, -205, -206, -
208, -209, -210, AND -213 REGARDING THE CITY'S COMMUTE
TRIP REDUCTION (CTR) PLAN.

WHEREAS, the Federal Way City Council adopted an ordinance on January 19, 1993 creating a new chapter of the Federal Way City Code entitled "CTR Regulations."

WHEREAS, the Federal Way City Council found that a plan to reduce single-occupant vehicle commute trips was required by RCW 70.94.521-551, RCW 36.70A.070[6e], and the CTR Task Force and promoted the public health, safety, and general welfare within the City of Federal Way and the Region;

WHEREAS, the ordinance was designated as Article VII, Sections 15-200 - 15-213 in the Federal Way City Code; and

WHEREAS, the Federal Way City Council recognized the importance of increasing individual citizens' awareness of air quality, energy consumption, and traffic congestion and the contribution individual actions can make toward addressing these issues; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FEDERAL WAY, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Amendment. The Federal Way City Code ("FWCC") shall be amended as follows:

A. Definitions. FWCC Section 15-200 shall be amended as follows:

For the purpose of this article and unless the context clearly requires otherwise, the following

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terms have the following meanings:

- (1) **"Affected Employee"** means a full-time employee who is scheduled to begin his or her regular work day at a single worksite between 6:00 a.m. and 9:00 a.m. (inclusive) on two or more weekdays per week for at least twelve continuous months. For the purposes of this chapter, shareholders, principles and associates in a corporation, partners (general or limited) in a partnership and participants in a joint venture are to be considered employees.
- (2) **"Affected Employer"** means a public or private employer that, for twelve continuous months, employs 100 or more full-time employees at a single worksite who are scheduled to begin their regular work day between 6:00 a.m. and 9:00 a.m. (inclusive) on two or more weekdays. The individual employees may vary during the year. Construction worksites, when the expected duration of the construction is less than two years, are excluded from this definition.
- (3) **"Alternative Mode"** means any type of commute transportation other than that in which the single-occupant motor vehicle is the dominant mode, including telecommuting and compressed work weeks if they result in reducing commute trips.
- (4) **"Alternative Work Schedules"** means programs such as compressed work weeks that eliminate work trips for affected employees.
- (5) **"Base Year"** means the period from January 1, 1992, through December 31, 1992, on which goals for vehicle miles traveled (VMT) per employee and proportion of single-occupant vehicle (SOV) trips shall be based.
- (6) **"City"** means the City of Federal Way.

- (7) **"Commute Trips"** means trips made from a worker's home to a worksite with a regularly scheduled arrival time of 6:00 a.m. to 9:00 a.m. (inclusive) on weekdays.
- (8) **"CTR Plan"** means the City of Federal Way's plan as set forth in this article to regulate and administer the CTR programs of affected employers within its jurisdiction.
- (9) **"CTR Program"** means an employer's strategies to reduce affected employees' SOV use and VMT per employee.
- (10) **"CTR Zone"** means an area, such as a census tract or combination of census tracts, within the City of Federal Way characterized by similar employment density, population density, level of transit service, parking availability, access to high occupancy vehicle facilities, and other factors that are determined to affect the level of SOV commuting.
- (11) **"Compressed Work Week"** means an alternative work schedule, in accordance with employer policy, that regularly allows a full-time employee to eliminate at least one work day every two weeks by working longer hours during the remaining days, resulting in fewer commute trips by the employee. This definition is primarily intended to include weekly and bi-weekly arrangements, the most typical being four 10-hour days or 80 hours in nine days, but may also include other arrangements. Compressed work weeks are understood to be an ongoing arrangement.
- (12) **"Dominant Mode"** means the mode of travel used for the greatest distance of a commute trip.
- (13) **"Employee"** means anyone who receives financial or other remuneration in exchange

for work provided to an employer, including owners or partners of the employer.

- (14) "Employer" means a sole proprietorship, partnership, corporation, unincorporated association, cooperative, joint venture, agency, department, district or other individual or entity, whether public, non-profit, or private, that employs workers.
- (15) "Flex-Time" is an employer policy allowing individual employees some flexibility in choosing the time, but not the number, of their working hours to facilitate the use of alternative modes.
- (16) "Full-Time Employee" means a person other than an independent contractor, scheduled to be employed on a continuous basis for 52 weeks per year for an average of at least 35 hours per week.
- (17) "Good Faith Effort" means that an employer has met the minimum requirements identified in RCW 70.94.531 and this ordinance and is working collaboratively with the City to continue its existing CTR program or is developing and implementing program modifications likely to result in improvements to its CTR program over an agreed upon length of time.
- (18) "Implementation" means active pursuit by an employer of the CTR goals of RCW 70.94.521-551 and this chapter as evidenced by appointment of a transportation coordinator, distribution of information to employees regarding alternatives to SOV commuting, and commencement of other measures according to their CTR program and schedule.
- (19) "Mode" means the type of transportation used by employees, such as single-occupant motor vehicle, rideshare vehicle (carpool, vanpool), transit, ferry, bicycle, and

walking.

- (20) **"Peak Period"** means the hours from 6:00 a.m. to 9:00 a.m. (inclusive), Monday through Friday, except legal holidays.
- (21) **"Peak Period Trip"** means any employee trip that delivers the employee to begin his or her regular workday between 6:00 a.m. and 9:00 a.m. (inclusive), Monday through Friday, except legal holidays.
- (22) **"Proportion of Single-Occupant Vehicle Trips" or "SOV Rate"** means the number of commute trips over a set period made by affected employees in SOVs divided by the number of affected employees working during that period.
- (23) **"Single-Occupant Vehicle (SOV)"** means a motor vehicle occupied by one employee for commute purposes, including a motorcycle.
- (24) **"Single-Occupant Vehicle (SOV) Trips"** means trips made by affected employees in SOVs.
- (25) **"Single Worksite"** means a building or group of buildings on physically contiguous parcels of land or on parcels separated solely by private or public roadways or rights-of-way occupied by one or more affected employers.
- (26) **"Telecommuting"** means the use of telephones, computers, or other similar technology to permit an employee to work from home, eliminating a commute trip, or to work from a work place closer to home, reducing the distance traveled in a commute trip by at least half.
- (27) **"Transportation Demand Management (TDM)" means a broad range of strategies that are primarily intended to reduce and reshape demand on the**

transportation system.

- (28) **"Transportation Management Association (TMA)"** means a group of employers or an association representing a group of employers in a defined geographic area. A TMA may represent employers within specific city limits, or may have a sphere of influence that extends beyond city limits.
- (29) **"Vehicle Miles Traveled (VMT) Per Employee"** means the sum of the individual vehicle commute trip lengths in miles made by affected employees over a set period divided by the number of affected employees during that period.
- (30) **"Waiver"** means an exemption from CTR program requirements granted to an employer by the City based on unique conditions that apply to the employer or employment site.
- (31) **"Week"** means a seven day calendar period, starting on Monday and continuing through Sunday.
- (32) **"Weekday"** means any day of the week except Saturday or Sunday.

B. FWCC Section 15-201 shall be amended as follows: Commute trip reduction goals.

The commute trip reduction goals for affected employers are to achieve the following reductions in vehicle miles traveled per employee as well as in the proportion of single-occupant vehicles from the 1992 base year value of the City's CTR zone: for either the worksite or the zone in which the worksite is located:

- (1) 15 percent by January 1, 1995.
- (2) ~~25~~ 20 percent by January 1, 1997.
- (3) ~~35~~ 25 percent by January 1, 1999.

(4) 35 percent by January 1, 2005.

C. FWCC Section 15-202 shall be amended as follows: **Designation of CTR zone and base year values.**

Employers in the City of Federal Way fall within the South King County CTR zone designated by the boundaries shown on the map filed with the City of Federal Way Clerk's Office.

Affected employers may choose to do a baseline survey to determine site specific baseline values as opposed to using the values established by the designated CTR zone. Sites affected after January 1, 1998 wishing to use site specific baseline values shall complete a baseline survey within one year of notification.

The base year value of this zone for proportion of SOV trips shall be 85 percent. The base year value for vehicle miles traveled (VMT) per employee shall be set at 9.3 miles. Commute trip reduction goals for major employers shall be calculated from these values. Therefore, affected employers within the city shall establish programs designed to result in SOV rates of not more than 72 percent in 1995, ~~64~~ 68 percent in 1997, and ~~55~~ 64 percent in 1999, and 55 percent in 2005, and VMT per employee of not more than 7.9 miles in 1995, ~~7.0~~ 7.4 miles in 1997, and ~~6.0~~ 7.0 miles in 1999, and 6.0 miles in 2005.

D. FWCC Section 15-205 shall be amended as follows: **Applicability.**

The provisions of this article shall apply to any affected employer at any single worksite within the corporate limits of the City. Employees will only be counted at their primary worksite. The following classifications of employees are excluded from the counts of employees: 1) seasonal agricultural employees, including seasonal employees of processors of agricultural products and 2) employees of construction worksites when the expected duration of the construction is less than two

years.

(1) **Notification of applicability.**

(a) Known affected employers located within the City will receive formal written notification by certified mail that they are subject to this article within 30 days after passage of this article.

(b) Affected employers that, for whatever reason, do not receive notice within 30 days of passage of this article must identify themselves to the City within 180 days of the passage of the article. Once they identify themselves, such employers will be granted ~~150~~ 180 days within which to develop and submit a CTR program.

(c) Affected employers that have not identified or do not identify themselves within 180 days of the passage of this ordinance and do not submit a CTR program within 180 days from the passage of this ordinance are in violation of this ordinance.

(~~cd~~) Any existing employer of 75 or more persons who obtains a business license in the City, subsequent to the passage of this chapter, will be required to complete an Employer Assessment Form to determine whether or not an employer will be deemed affected or non-affected in accordance with the provisions of this chapter.

(2) **New affected employers.** Affected employers must identify themselves to the City within 180 days of either moving into the City boundaries or growing in employment at a worksite to 100 or more affected employees. Once they identify themselves, such

employers shall be granted ~~150~~ 180 days to develop and submit a CTR program.

Employers that do not identify themselves within 180 days are in violation of this

ordinance. New ~~Newly~~ affected employers shall have two years to meet the first CTR

goal of a 15 percent reduction in proportion of single occupancy vehicle trips or

vehicles miles traveled per person; ~~from the base year values identified in Section 15-~~

~~202;~~ four years to meet the second goal of a ~~25~~ 20 percent reduction; and six years

to meet the third goal of a ~~35~~ 25 percent reduction; and twelve years to meet the

fourth goal of a 35 percent reduction from the time they begin their program.

- (3) **Change in status as an affected employer.** Any of the following changes in an employer's status will change the employer's CTR program requirements:

(a) If an affected employer can document that it faces an extraordinary circumstance that will change its status as an affected employer, it can apply for an exemption pursuant to Section 15-209(a).

(b) If an employer initially designated as an affected employer no longer employs 100 or more affected employees and has not employed ~~expects not to employ~~ 100 or more affected employees for the past ~~next~~ 12 months, that employer is no longer an affected employer. It is the responsibility of the employer to provide documentation to the city that it is no longer an affected employer.

(c) If the same employer returns to the level of 100 or more affected employees within the same 12 months ~~12 or more months after its change in status to an~~ "unaffected" employer, that employer shall be treated considered ~~an~~ as a new affected employer, for the entire 12 months and will be subject to the same

program requirements as other new affected employers.

- (d) If the same employer returns to the level of 100 or more affected employees 12 or more months after its change in status to an "unaffected" employer, that employer shall be treated as a new affected employer and will be subject to the same program requirements as other new affected employers

E. FWCC Section 15-206 shall be amended as follows: Requirements for employers.

An affected employer is required to make a good faith effort, as defined in RCW 70.94.534(2) and this ordinance, to develop and implement a CTR program that will encourage its employees to reduce VMT per employee and SOV commute trips. The CTR program must include the mandatory elements described below, including submittal of a CTR program description and annual progress report. Transportation management associations may submit CTR program descriptions and annual reports on behalf of employers; however, each employer shall remain accountable for the success of its program.

- (1) **Description of employer's CTR program.** Each affected employer is required to submit a description of its CTR program to the city on the official form available from the public works department. The CTR program description presents the strategies to be undertaken by an employer to achieve the commute trip reduction goals for each goal year. Employers are encouraged to consider innovative strategies and combine program elements in a manner that will best suit their location, site characteristics, business type, and employees' commuting needs. Employers are further encouraged to cooperate with each other and to form or use transportation

management organizations in developing and implementing CTR programs.

At a minimum, the employer's description must include:

- a. General description of each employment site location within the city limits, including transportation characteristics, surrounding services, and unique conditions experienced by the employer or its employees.
- b. Number of employees affected by the CTR program.
- c. Documentation of compliance with the mandatory CTR program elements, as described in subsection 15-206(2).
- d. Description of the additional elements included in the CTR program.
- e. Schedule of implementation, assignment of responsibilities, and commitment to provide appropriate resources to carry out the CTR program.

(2) **Mandatory program elements.** Each employer's CTR program shall include the following mandatory elements:

- a. **Transportation coordinator.** The employer shall designate a transportation coordinator to administer the CTR program. The coordinator's and/or designee's name, location, and telephone number must be displayed prominently at each affected worksite. The coordinator shall oversee all elements of the employer's CTR program and act as liaison between the employer and the City. An affected employer with multiple sites may have one transportation coordinator for all sites.
- b. **Information distribution.** Information about alternatives to SOV commuting shall be provided to employees at least once a year. This shall

consist of, at a minimum, a summary of the employer's program, including the Transportation Coordinator's name and phone number. Employers must also provide a summary of their program to all new employees at the time of hire. Each employer's program description and annual report must describe what information is to be distributed by the employer and the method of distribution.

- c. **Annual progress report.** The CTR program must include an annual review of employee commuting and of progress and good faith efforts toward meeting the SOV reduction goals. Affected employers shall file a progress report annually with the City. The employer should contact the City's Public Works Department for the format of the report. Survey information or approved alternative information approved by the public works director shall be required in the report submitted in the -1995, 1997 and 1999 reports second, fourth, sixth, eighth, tenth, and twelfth years after program implementation begins.

- d. **Additional program elements.** In addition to the specific program elements described above, the employer's CTR program shall include a set of measures designed to meet CTR goals, as described in the city's administrative procedures.

F. FWCC Section 15-208 shall be amended as follows: **Schedule and process for CTR reports, program review and implementation.**

- (a) **CTR program.** Not more than ~~six months~~ 180 days after the adoption of this article,

or within six months 180 days after an employer becomes subject to the provisions of this article, the employer shall develop a CTR program and shall submit to the city a description of that program for review.

(b) **CTR annual reporting date.** Employers will be required to submit an annual CTR report to the city beginning with the first annual reporting date assigned during the initial program submittal. The annual reporting date shall be no less than 12 months from the day the initial program description is submitted. Subsequent years' reports will be due on the same date each year.

(c) **Content of annual report.** The annual progress report shall describe each of the CTR measures that were in effect for the previous year, the results of any commuter surveys undertaken during the year, and the number of employees participating in CTR programs. Survey information or alternative information approved by the public works director must be provided in the reports submitted in the 1995, 1997, and 1999; second, fourth, sixth, eighth, tenth, and twelfth years after program implementation begins.

(d) **Program review.** The city shall provide the employer with written notification indicating whether a CTR program was approved or deemed unacceptable.

(1) Initial program descriptions will be deemed acceptable if: 1) all required information on the program description form is provided, and, 2) the program description includes the following information:

a. Name, location and telephone number of the employee transportation coordinator for each worksite.

- b. Plan for and documentation of regular distribution of information to employees about the employer's CTR program at the worksite, including alternatives to driving alone to work.
 - c. Plan for and implementation of at least one additional measure designed to achieve the applicable goal.
- (2) Annual reports will be deemed acceptable if the annual report form is complete and contains information about implementation of the prior year's program elements and proposed new program elements and implementation schedule. Annual reports must also contain a review of employee commuting and report of progress toward meeting SOV goals.
- (3) Beginning in 1995, the programs described in an affected employer's the annual reports will be deemed acceptable if either the SOV trip or the VMT per employee goals have been met based on the criteria contained in Section 15-213 of this ordinance. If neither goal has been met, the employer must propose modifications designed to make progress toward the applicable goal in the coming year. If the revised program is not approved, the city shall propose modifications to the program and direct the employer to revise its program within 30 days to incorporate those modifications or modifications which the jurisdiction determines to be equivalent.
- (e) **Implementation of employer's CTR program.** The employer shall implement the approved CTR program not more than 180 days after the program was first submitted to the city unless extensions allow for late implementation. Implementation of

programs that have been modified based on non-attainment of CTR goals must occur within 30 days following city approval of such modifications.

G. FWCC Section 15-209 shall be amended as follows: Requests for exemption/modification of CTR Requirements.

- (a) Worksite exemptions. An affected employer may submit a written request to the city to grant for an exemption from all CTR program requirements or penalties for a particular worksite. The employer must demonstrate that it would experience undue hardship in complying with the requirements of the ordinance as a result of the characteristics of its business, its work force, or its location(s). An exemption may be granted by the city if and only if the affected employer demonstrates that it faces an extraordinary circumstance such as bankruptcy, as a result of the characteristics of its business, its work force, or its location(s) and is unable to implement measures that could reduce the proportion of SOV trips and VMT per employee. ~~Requests for exemptions applying to the initial program submittal are due within three months after the employer has been notified that it is subject to this article and thereafter requests can be made at any time.~~ Exemptions may be granted by the city at any time based on written notice provided by the affected employer. Requests must be made in writing by certified mail or delivery, return receipt. The notice should clearly explain the conditions for which the affected employer is seeking an exemption from the requirements of the CTR program. The city shall review annually all employers receiving exemptions, and shall determine whether the exemptions will continue to be in effect during the following program year.

- (b) Employee exemptions. Specific employees or groups of employees who are required to drive alone to work as a condition of employment may be exempted from a worksite' CTR program. Exemptions may also be granted for employees who work variable shifts throughout the year and who do not rotate as a group to identical shifts. The city will use the criteria identified in the CTR Task Force Guidelines to assess the validity of employee exemption requests. The City shall review annually all employee exemption requests, and shall determine whether the exemption will be in effect during the following program year.
- (c) Modification of CTR program goals. Any affected employer may request that the city modify its CTR program goals. Such requests shall be filed in writing at least 60 days prior to the date the worksite is required to submit its program description or annual report. The goal modification request must clearly explain why the worksite is unable to achieve the applicable goal. The worksite must also demonstrate that it has implemented all of the elements contained in its approved CTR program. The city will review and grant or deny requests for goal modifications in accordance with procedures and criteria identified in the CTR Task Force Guidelines. An employer may not request a modification of the applicable goals until one year after city approval of its initial program description or annual report.
- (d) Modification of CTR program elements. Any affected employer may request a modification of the following CTR program elements, other than the mandatory elements specified in this ordinance, including record keeping requirements. Such request may be granted only if one of the following conditions exists.

~~(1) An affected employer can demonstrate it requires significant numbers of its employees to use the vehicles they drive to work during the work day for work purposes, that no reasonable alternative commute mode exists for these employees, and that the vehicles cannot reasonably be used for carpools or vanpools and/or an affected employer can demonstrate that some employees work variable shifts during the year, so that these employees sometimes begin their shifts within the 6:00 a.m. to 9:00 a.m. time period and other times begin their shifts outside that time period. (Exception: If there are a significant number of employees who work an identical shift rotation, those employees would be expected to be part of the employer's CTR program measurement, as they form enough of a consistent pool to maintain ridesharing arrangements.)~~

~~If the employer provides documentation indicating how many employees meet either of these conditions, the applicable goals will not be changed, but the employees who fall into these categories will not be included in the calculations of proportion of SOV trips and VMT per employee used to determine the employer's progress toward program goals. A request for a modification based on this condition must be made by the employer within three months after being notified that they are subject to this chapter.~~

~~(2) An affected employer demonstrates that its worksite is contiguous with a CTR zone boundary and that the worksite conditions affecting alternative commute options are similar to those for employers in the adjoining CTR zone. Under~~

~~this condition, the employer's worksite may be made subject to the same goals for VMT per employee and proportion of SOV trips as employers in the adjoining CTR zone.~~

~~A request for a modification based on this condition must be made by the Employer within three months after being notified that they are subject to this article.~~

~~(3) Unanticipated conditions, such as unavailability of alternative commute modes due to factors related to the worksite, an employer's work force, or characteristics of the business that are beyond the employer's control. A request for goal modification based on this condition must be made by the employer's assigned reporting dates in 1995 and 1997 1999 and 2005.~~

~~(4) Relocation of a worksite to another CTR zone. Requests for goal modification based on this condition may be made at any time.~~

~~(5) If an employer demonstrates its worksite conditions differ from the standard 85% base year values by submitting written employee surveys administered at the worksite within ninety (90) days of the effective date of this article, or within ninety (90) days of becoming a newly affected employer, which surveys establish the employer's own base year values of VMT per employee and SOV rates were higher than the CTR zone average, then that employer's base year value may be the percentage calculated from such surveys.~~

(bc) **Written request for modification.** All requests for modification of CTR program goals must be made in writing to the city by certified mail or delivery, return receipt.

(cd) **Extensions.** An employer may request additional time to submit a CTR program or CTR annual progress report, or to implement or modify a program. Such requests shall be made in writing before the due date for which the extension is being requested. Requests for extensions must be made prior to the due date anytime a program submission is going to be more than one week late. Extensions not to exceed 90 days shall be considered for reasonable causes. Employers will be limited to a total of 90 allowed extension days per year. Extensions shall not exempt an employer from any responsibility in meeting program goals. Extensions granted due to delays or difficulties with any program element(s) shall not be cause for discontinuing or failing to implement other program elements. An employer's annual reporting date shall not be adjusted permanently as a result of these extensions. An employer's annual reporting date may be extended at the discretion of the public works director.

H. FWCC Section 15-210 shall be amended as follows: **Credit for transportation demand management efforts.**

(a) **Credit for programs implemented prior to the base year.** Employers with successful Transportation Demand Management ("TDM") programs implemented prior to the 1992 base year may apply to the city for program credit.

(1) Employers whose VMT per employee and proportion of SOV trips are already equal to or less than the goals for one or more future goal years, and who commit in writing to continue their current level of effort, shall be exempt from the following year's annual report.

- (2) Employers ~~applying for the program credit in their initial 1993 program~~ description shall be considered to have met the first measurement ~~1995~~ CTR goals if their VMT per employee and proportion of SOV trips are equivalent to a 12 percent or greater reduction from the base year zone values. This three percentage point credit applies only to the first measurement ~~1995~~ CTR goals.

For the initial year, employer requests for program credit are due within three months after notification that the employer is subject to this chapter. Requests for program credit must be received by the employer's assigned reporting dates in ~~1995~~ 1999 and ~~1997~~ 2001 for succeeding years.

Application for a program credit shall include an initial program description, written commitment on an official report form to maintain program elements, and results from a survey of employees, or equivalent information that establishes the applicant's VMT per employee and proportion of SOV trips. The survey or equivalent information shall conform to all applicable standards established in the CTR Task Force Guidelines ~~Director's Rules for implementation of this article.~~

- (b) **Credit for alternative work schedules, telecommuting, bicycling and walking, by affected employees.**

- (1) The city will count commute trips eliminated through alternative work schedules, telecommuting options, bicycling and walking as 1.2 vehicle trips eliminated. This assumption applies to both the proportion of SOV trips and VMT per employee.

- (2) This type of credit is applied when calculating the SOV and VMT rates of affected employers.

I. FWCC Section 15-213 shall be amended as follows: **Enforcement.**

- (a) **Compliance.** For purposes of this section, compliance shall mean submitting required reports and documentation at prescribed times and fully implementing *in good faith* all provisions in an accepted CTR program.
- (b) *Program modification criteria. The following criteria for achieving goals for VMT per employee and proportion of SOV trips shall be applied in determining requirements for employer CTR program modifications:*
- (1) *If an employee makes a good faith efforts, as defined in RCW 70.94.534(2) and this ordinance, and meets either or both the applicable SOV or VMT goal, the employer has satisfied the objectives of the CTR plan and will not be required to modify its CTR program.*
- (2) *If an employee makes a good faith effort, as defined in RCW 70.94.534(2) and this ordinance, but has not met or is not likely to meet the applicable SOV or VMT goal, the city shall work collaboratively with the employer to make modifications to its CTR program. After agreeing on modification, the employer shall submit a revised CTR program description to the city for approval within 30 days of reaching an agreement.*
- (3) *If an employer fails to make a good faith effort, as defined in RCW 70.94.534(2) and this ordinance, and fails to meet either the applicable SOV or VMT reduction goal, the city shall work collaboratively with the employer to identify*

modifications to the CTR program and shall direct the employer to revise its program within 30 days to incorporate the modifications. In response to the recommended modifications, the employer shall submit a revised CTR program description, including the requested modifications or equivalent measures, within 30 days of receiving written notice to revise its program. The city shall review the revisions and notify the employer of acceptance or rejection or the revised program. If a revised program is not accepted, the city will send written notice to that effect to the employer within 30 days and if necessary, require the employer to attend a conference with program review staff for the purpose of reaching a consensus on the required program. A final decision on the required program will be issued in writing by the city within ten working days of the conference.

(bc) **Violations.** The following actions shall constitute a violation of this chapter:

- (1) Failure to implement an approved CTR program, unless the program elements that are carried out can be shown through quantifiable evidence to meet or exceed VMT and SOV goals as specified in this chapter. Failure to implement a CTR program includes but is not limited to:
 - a. Failure of any affected employer to submit a complete CTR program within the deadlines specified in section 15-208.
 - b. Failure to submit required documentation for annual reports.
 - c. Submission of fraudulent data.
- (2) Failure to modify a CTR program found to be unacceptable by the city under

15-208(d).

(3) Failure to make a good faith effort, as defined in RCW 70.94.534(4) and this ordinance.

- (c) **Penalties.** No affected employer with an approved CTR program which has made good faith effort may be held liable for failure to reach the applicable SOV and VMT goal. Each day of failure by an employer to a) implement a commute trip reduction program or b) modify an unacceptable commute trip reduction program shall constitute a separate violation and shall be considered a Class I civil infraction pursuant to RCW 7.80.120. The penalty for a violation shall be \$250 per day. An employer shall not be liable for civil penalties if failure to implement an element of a CTR program was the result of an inability to reach agreement with a certified collective bargaining agent under applicable laws where the issue was raised by the employer and pursued in good faith. Unionized employers shall be presumed to act in good faith compliance if they: (a) Propose to a recognized union any provision of the employer's CTR program that is subject to bargaining as defined by the National Labor Relations Act; and (b) Advise the union of the existence of the statute and the mandates of the CTR program approved by the City and advise the union that the proposal being made is necessary for compliance with RCW 70.94.531.

Section 2. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 3. Severability. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this

ordinance or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to other persons or circumstances.

Section 4. Effective Date. This ordinance shall be effective thirty (30) days after passage, as provided by law.

PASSED by the City Council of the City of Federal Way this 21 day of April, 1998.


CITY OF FEDERAL WAY


MAYOR, RON GINTZ

ATTEST:


CITY CLERK, CHRIS GREEN, CMC

APPROVED AS TO FORM:


CITY ATTORNEY, LONDI LINDELL

FILED WITH THE CITY CLERK:	03-31-98
PASSED BY THE CITY COUNCIL:	04-21-98
PUBLISHED:	04-25-98
EFFECTIVE DATE:	05-21-98
ORDINANCE NO.	<u>98-313</u>

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